

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

GERALD LEE HEALEY,

Petitioner

v.

//

CIVIL ACTION NO. 1:06CV131
CRIMINAL NO. 1:04CR44-1
(Judge Keeley)

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On August 31, 2006, pro se petitioner, Gerald Lee Healey, filed a petition pursuant to 28 U.S.C. § 2255. The Court referred this matter to United States Magistrate Judge John S. Kaull for initial screening and a report and recommendation in accordance with Local Rule of Prisoner Litigation 83.09.

On May 8, 2007, Magistrate Judge Kaull issued an Opinion and Report and Recommendation recommending that Healey's Motion Under § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody be denied as untimely and the case be dismissed with prejudice as untimely. The Magistrate Judge determined that Healey's § 2255 motion filed on August 31, 2006 was untimely because "the facts giving rise to the petitioner's claims could have, or should have been known through due diligence much sooner" and further found that Healey's § 2255 petition was subject to the time limitations of the Anti-Terrorism and Effective Death Penalty Act.

ORDER ADOPTING OPINION/REPORT AND RECOMMENDATION

The Report and Recommendation also specifically warned that failure to object to the recommendation would result in the waiver of any appellate rights on this issue. No objections were filed.¹

Therefore, the Court **ADOPTS** the Report and Recommendation in its entirety. Accordingly, the Court **DENIES** the Motion Under § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Docket No. 30 in 1:04CR44-1 and Docket No. 1 in 1:06CV131) and **ORDERS** Healey's case **DISMISSED WITH PREJUDICE** and stricken from the Court's docket.

The Clerk is directed to mail a copy of this Order to the pro se petitioner, certified mail, return receipt requested and to counsel of record.

Dated: June 7, 2006

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE

¹ The failure to object to the Report and Recommendation not only waives the appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).